

SUPERIOR COURT BERGEN COUNTY

FILED

APR 27 2005

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CHARLES J. WALSH
J.S.C.

PORZIO, BROMBERG & NEWMAN, P.C.

100 Southgate Parkway

Morristown, NJ 07962-1997

(973) 538-4006

Attorneys for Defendant Wyeth


DEPUTY CLERKIN RE: DIET DRUG LITIGATION
VENUED IN BERGEN COUNTYBRIGMAN, FRANKIE A.
GIBSON, SARAH ANN
GRABER-KEITH, PAMELA L.
MORRISON, LEA M.
WARD, ELIZABETH W.ALLEN, SHEILA M.
BRYANT, INEZ E.
CATERINA, NAIDA T.
EFIRD, MAROLYN J.
GAUTHIER, PATRICIA
SEGAL, LINDA A.
SHOLAR, MARION F.
WHITE, SHIRLEY A.SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
MASTER DOCKET NO. BER-L-13379-04 MT
DOCKET NO. BER-L-2547-04 MT
DOCKET NO. BER-L-2561-04 MT
DOCKET NO. BER-L-2562-04 MT
DOCKET NO. BER-L-2565-04 MT
DOCKET NO. BER-L-2571-04 MTDOCKET NO. BER-L-5599-03 MT
DOCKET NO. BER-L-2549-04 MT
DOCKET NO. BER-L-2551-04 MT
DOCKET NO. BER-L-2554-04 MT
DOCKET NO. BER-L-2559-04 MT
DOCKET NO. BER-L-2567-04 MT
DOCKET NO. BER-L-2568-04 MT
DOCKET NO. BER-L-2572-04 MTORDER CONCERNING *EX PARTE* MEETINGS
BETWEEN WYETH AND PLAINTIFFS'
TREATING PHYSICIANS PRIOR
TO THEIR TRIAL TESTIMONYTRIAL GROUP 1C & 1D CASES

THIS MATTER having been opened to the Court by attorneys for defendant Wyeth by motion to establish that Wyeth's counsel may meet *ex parte* with plaintiffs' treating physicians prior to their trial testimony, including prior to their depositions, and requiring plaintiffs to sign authorizations permitting such meetings, and the Court having considered the papers submitted and the arguments of counsel, and for good cause shown,

IT IS on this 27th day of April, 2005, ORDERED AS FOLLOWS:

1. Wyeth's motion is GRANTED in part.

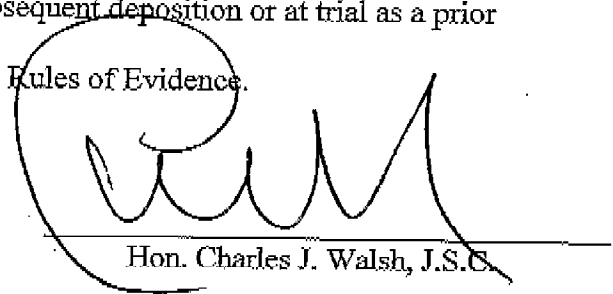
2. By Thursday, May 5, 2005, Trial Group 1C and 1D plaintiffs shall produce to counsel for Wyeth executed authorizations addressed to their prescribing physicians in the form attached to this Order.

3. Pursuant to the authorizations, Wyeth's counsel may meet with a plaintiff's prescribing physicians *ex parte* to discuss issues relevant to the respective parties burden of proof as set forth in the Court's April 7, 2005, Opinion concerning the heeding presumption, and any other medical records that have already been disclosed. Wyeth's counsel may only discuss these anticipated areas of inquiry at the physician's ~~*de bene esse*~~ deposition or at trial within the above scope, and the physician's qualifications and professional experience.

4. Plaintiffs and their counsel shall not discourage the physicians from participating in voluntary *ex parte* meetings conducted pursuant to this Order or otherwise interfere with such meetings. Plaintiffs and their counsel, as set forth in the attached authorization, do have the right to communicate, in writing, with the physician, if necessary, in order to express any appropriate concerns as to the proper scope of the interview, and the extent to which plaintiff continues to assert the patient-physician privilege with respect to that physician. ~~Any such writing must be approved by the Court.~~

5. Each *ex parte* meeting conducted pursuant to this Order shall be transcribed verbatim by a certified court reporter. The transcript of an *ex parte* meeting with a physician shall be produced to plaintiff's counsel at the start of any subsequent deposition of the physician in connection with the Trial Group 1C and 1D cases, if any.

6. A transcript of an *ex parte* meeting between Wyeth's counsel and plaintiff's physician may only be used at the physician's subsequent deposition or at trial as a prior statement of a witness pursuant to the New Jersey Rules of Evidence.



Hon. Charles J. Walsh, J.S.C.

AUTHORIZATION

To:

Patient's Name:

Patient's SSN:

Patient's DOB:

Patient's Address:

Patient's Attorney:

In the event that legal counsel for Wyeth requests that you provide trial testimony in my pending lawsuit, whether in person in New Jersey or by videotaped trial deposition, I hereby consent to your participation in a meeting with legal counsel for Wyeth without my legal counsel being present pursuant to *Stempler v. Speidell*, 100 N.J. 308 (1985). ***YOUR PARTICIPATION IN A MEETING PURSUANT TO THIS AUTHORIZATION IS VOLUNTARY.***

If you agree to participate in an *ex parte* meeting with Wyeth counsel pursuant to this authorization, the discussion shall be limited to the following scope:

Issues relating to the risks associated with Pondimin and Redux, drug product labeling and warnings, factors influencing your decision to prescribe Pondimin and/or Redux to me and whether you would have prescribed the drugs had you received additional risk information, and your practice with respect to disclosure of risk information to patients. You may also discuss my medical history, medical conditions, risk factors, diagnoses, prognoses, and related issues as previously covered at your deposition or in medical records exchanged between counsel in my lawsuit.

- ☐ Your qualifications and professional experience.
- ☐ The anticipated areas to be covered by counsel during your trial testimony.

Furthermore, Wyeth's counsel must notify my legal counsel in writing of the time and place of any *ex parte* meeting and must have a certified court reporter present at the meeting to transcribe the discussion verbatim.

This document authorizes you to disclose health information concerning the above named patient for the purpose of permitting defendants in my lawsuit access to medical information pertinent to that lawsuit.

This authorization permits you to release health information relating to me at any time within the scope set forth above, including issues disclosed at your prior deposition in my lawsuit.

This authorization is given in compliance with the federal consent requirements for release of alcohol or substance abuse records of 42 CFR 2.31, the restrictions of which have been specifically considered and expressly waived.

You are authorized to release the above information to the following representative of defendants in my lawsuit: Porzio, Bromberg & Newman, P.C., other Wyeth counsel, and/or their agents in this litigation.

You may not condition treatment, payment, enrollment, or eligibility for benefits on whether this authorization is signed.

This authorization may be revoked by me in writing at any time. My written revocation must be submitted to you at the address indicated above, with a copy of the revocation provided simultaneously to Anita Hotchkiss, Esq., at Porzio, Bromberg & Newman, P.C., P.O. Box 1997, 100 Southgate Parkway, Morristown, New Jersey, 07962.

I further acknowledge the potential for information disclosed pursuant to this authorization to be subject to redisclosure by a recipient and not protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

You may accept a copy of this authorization in lieu of an original. This authorization further authorizes you to provide updated records without additional authorization.

This authorization expires two years from the date below.

Signature of Patient

Date: _____